

Office of the Presiding Officer
Military Commission

September 29, 2005

SUBJECT: Presiding Officers Memorandum (POM) # 12 - 1 Filings Inventory

This POM supersedes POM 12 dated 20 October 2004.

1. The Presiding Officer has adopted procedures to allow electronic filing of certain documents (e.g., motions, witness request, other filings, requests for access to evidence, requests for protective orders, requests for limited disclosure orders, and requesting conclusive notice to be taken.) *See* POMs 3-1, 4-3, 6-2, 7-1, and 10-1, current editions. The procedures were adopted because:

- a. Most items filed with the Commission are prepared in electronic form.
- b. Documents not in electronic form can be easily converted into an electronic file.
- c. The counsel, Assistant, court reporters, Presiding Officer and those who need to file and receive filings are often in geographically diverse locations.
- d. Electronic filing enables counsel anywhere in the world with email access (to include web based accounts) to make and receive filings.
- e. Service of filings by mail or courier is slow and expensive. Some filings are made to and from Guantanamo Bay, Cuba, where service by mail is impractical.
- f. Electronic filing is fast, reliable, efficient and creates an electronic file that can be efficiently and quickly shared with others.
- g. Electronic filing creates and retains a precise record of the dates and times when filings were sent and received.

2. Electronic filing enables parties to send emails or “CC” (carbon copy) emails to anyone. If a filing is sent to many addressees, it is sometimes difficult to determine the intended or action recipient. In some instances, those who receive large numbers of emails may overlook an email which was intended for them specifically.

3. This POM establishes:

- a. Requirements for the Assistant to maintain a “Filings Inventory”. The purpose of the Filings Inventory is to set forth which filings and other matters are before the Presiding Officer.

b. Responsibilities for counsel to use filings designations once created and to check the accuracy of a filings inventory, upon receipt, so that counsel are certain of those matters before the Presiding Officer.

4. Establishing the Filings Inventory. The Assistant shall establish and maintain a Filings Inventory for each case referred to the Commission which reflects those filings pending before the Presiding Officer.

a. As soon as the first filing on an issue is received, the Assistant shall assign a *filing designation* using one of four categories below followed by a number: The terms filing number and filing designation may be used interchangeably.

P for a filing or series of filings initiated by the prosecution.

D for a filing or series of filings initiated by the defense.

PO for a filing or series of filings initiated/directed by the Presiding Officer.

Protective Order for protective orders issued by the Presiding Officer.

Other categories may be added at a later time.

b. The number following the category designation shall be the next unused number for the category and case. The *filing designation* (category and number *EX:* PE2, D4, PO1, Protective Order 3) shall be unique for each case and the designation shall not be reused.

c. To identify a specific document which has been filed, the filing designation may add a simple description of the nature of the filing such as Motion, Response, Reply, Supplement, Answer, or other designation assigned by the Assistant, plus the name of the accused.

d. The Filings Inventory shall contain an Active Section which lists all filings currently before the Presiding Officer.

e. The Filings Inventory shall also contain a listing of all filings which are no longer before the Presiding Officer. These items shall be placed in the Inactive Section of the Filings Inventory.

5. Filing designation and future communications or filings.

a. Once a filing designation has been assigned, all future communications - whether in hard copy or by email - concerning that series of filings will use the filing designation as a reference. This includes adding the file designations to the style of all filings, the subject lines of emails, and the file names to ALL email attachments. (*See also POM # 4-3.*) Examples:

* An email subject line forwarding a response to P2 in US v Jones should read: "*P2 Jones - Defense Response - Motion to Exclude Statements of Mr. Smith.*" The filename of the filings shall be the same as the response being sent.

* The filename of a document that is an attachment to the response should read “P2 Jones - Defense Response - Motion to Exclude Statements of Mr. Smith - attachment - CV of Dr Smith.”

b. Each of the designations or filenames listed above may also include other descriptions or information (date, when filed, etc.) the parties may wish to add to assist in their management of filings.

c. The names given to matters that may appear on the filings inventory - such as the subject of a motion - will not be classified or otherwise protected as the filings inventory is intended to be transmitted through unsecured networks. Counsel must therefore ensure that the names of their filings are not in themselves classified. (See POM # 4-3.)

6. Distribution of the Filings Inventory.

a. As soon as practical after the Assistant receives a filing, the Assistant shall reply to the party making the filing, advising that the Filings Inventory has been annotated. In the case of a filing that initiates a new issue or motion, the reply from the Assistant shall also provide the filing designation.

b. At the request of any party or the Chief Clerk of Military Commissions (CCMC), the Assistant shall provide a copy of the current Filings Inventory as soon as practical.

c. The Assistant shall from time to time, or when directed by the Presiding Officer, distribute copies of the Filings Inventory to the Presiding Officer, all counsel on the case, the Chief Prosecutor and Chief Defense Counsel (and their Deputies and Chief Legal NCOs,) and the CCMC.

d. The Presiding Officer shall ensure that a copy of the current Filings Inventory is marked as a Review Exhibit at the beginning of each session of the Commission, so that parties are free to refer to filings by the filing designation.

e. At sessions of the Commission, counsel shall, whenever possible, refer to a filing by the filing designation so the record is clear concerning precisely which filing or issue is being addressed.

7. Counsel responsibility when receiving the Filings Inventory. The Filings Inventory is the only method by which counsel can be sure what filings have been received by the Presiding Officer, and what matters are before the Presiding Officer.

a. Counsel will examine each Filings Inventory as it is received and notify the Assistant, Presiding Officer, and opposing counsel of any discrepancies within one duty day. See paragraph 5, POM # 4-3 for additional responsibilities when receiving emails containing or referring to filings.

b. If counsel believe they have submitted a filing which is not reflected on the Filings Inventory, they shall immediately send that filing - with all attachments - to the Assistant, Presiding Officer, and opposing counsel, noting the discrepancy.

c. If there is a discrepancy in the Filings Inventory and counsel fail to take the corrective action as indicated above and in paragraph 8 below, the Presiding Officer may elect not to consider that filing.

8. Effect of omission in filings inventory.

a. If a filing or other matter is not on the Filings Inventory, it is not before the Presiding Officer for decision. If a matter has been mistakenly left off the Filings Inventory, it is the responsibility of counsel to note the omission and advise the Assistant (*See* paragraph 7c, above.).

b. If counsel believe that a matter should be on the Filings Inventory and have made that known to the Assistant, and the Assistant does not or fails to include the matter on the Filings Inventory, it is the responsibility of counsel to raise the matter with the Presiding Officer.

c. Failure to fulfill the responsibilities noted above constitute waiver should the Presiding Officer not address or rule upon a matter that is not on the Filings Inventory.

Original Signed by:

Peter E. Brownback III
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Presiding Officer